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UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF NEW YORK

12/9/2021 8:48 am

U.S. DISTRICT COURT  
EASTERN DISTRICT OF NEW YORK  
LONG ISLAND OFFICE

UNITED STATES OF AMERICA, . Criminal No. 13-cr-00607-JFB-AYS-1  
.  
Vs. . 100 Federal Plaza  
. Central Islip, NY 11722  
PHILLIP A. KENNER, .  
TOMMY C. CONSTANTINE . DATE August 25, 2021  
. . . . .

TRANSCRIPT OF TELEPHONIC STATUS CONFERENCE  
BEFORE HONORABLE JOSEPH F. BIANCO  
VISITING JUDGE

APPEARANCES:

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I N D E X

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1 THE CLERK: Criminal cause for a telephone status  
2 conference, 13-cr-607. The United States of America against  
3 Phillip Kenner and Tommy Constantine. Counsel, please state  
4 your appearances, starting with counsel for the Government.

5 MS. O'CONNOR: Madeline O'Connor and Diane Leonardo  
6 for the United States. Good afternoon, Your Honor.

7 THE COURT: Good afternoon.

8 MR. KOSTOLAMPROS: George Kostolampros, of Venable,  
9 for Danske Bank. Along with me are Xochitl Strohbehn, Doreen  
10 Martin, and Kelly Weiner. Good afternoon, Your Honor.

11 THE COURT: Good afternoon.

12 MR. WOLINSKY: Good afternoon, Your Honor, this is  
13 Mark Wolinsky, pro se, for the homeowners.

14 THE COURT: Good afternoon, Mr. Wolinsky.

15 MR. WOLINSKY: Good afternoon.

16 MR. HILL: Good afternoon, Judge, Chris Hill for CSL  
17 Properties, minority owner in the property.

18 THE COURT: Yes, good afternoon, Mr. Hill.

19 MS. RAMACHANDRAN: Good afternoon, this is Seetha  
20 Ramachandran on behalf of Owen Nolan.

21 THE COURT: Good afternoon, Mr. Ramachandran.

22 MR. SOUTHER: Good afternoon, Your Honor, this is Tom  
23 Souther from Freeh Sporkin and Sullivan on behalf of Diamante  
24 and Ken Jowdy.

25 THE COURT: Good afternoon, Mr. Souther. I think

1 that's everybody.

2 MR. HOLDEN: Your Honor, sorry, Your Honor, good  
3 afternoon, this is John Holden from Windels Marx Lane and  
4 Mittendorf, on behalf of Silverpeak.

5 THE COURT: Yes, good afternoon, Mr. Holden. So the  
6 Court scheduled this status conference as you know to resolve  
7 both the timing and scope of the discovery that is outstanding.  
8 I've received the supplemental letters with respect to that,  
9 including Danske Bank's letter of today, August 25th. So I'm  
10 prepared to discuss that. As well as related to that I guess  
11 is the desire for the Bank to get the appraisal from the  
12 Government, which I'm prepared to discuss.

13 But I also, the Bank indicated in its letter that  
14 it's understanding is the Government, the settlement  
15 discussions with Silverpeak have progressed with the  
16 Government. So I don't want I ask the Government just to  
17 update me with regard to the settlement discussions.

18 MS. O'CONNOR: Yes, Your Honor, the Government has  
19 reached a settlement in principle with Silverpeak. While the  
20 Government, Danske, and some of the third parties originally  
21 contemplated an interlocutory sale of the resort property,  
22 which would implicate the interests asserted by Danske and the  
23 other third parties, the settlement currently contemplated  
24 involves only a sale of the note. And therefore won't affect  
25 any interests other than Danske's.

1           Basically the Government's willing to consent to  
2   Danske selling its note to Silverpeak, in exchange for  
3   Silverpeak paying the Government a sum of money in lieu of the  
4   Government forfeiting the resort in equity interest.

5           This proposed settlement would end the majority of  
6   the litigation in the ancillary proceedings. CSL and the other  
7   entities and individuals would retain their respective  
8   ownership interest in the resort because the Government would  
9   forego forfeiting those interests.

10           None of the third parties who have asserted an equity  
11   interest in the resort would need to be parties to the stip.  
12   And their petitions would be effectively mooted. So while  
13   we're willing, certainly willing to consider settlement options  
14   with other investors, as the Court might be aware, counsel for  
15   CSL and Nolan have presented the Government and Danske with  
16   other potential investors, we're going to see where the  
17   potential settlement with Silverpeak goes first.

18           About a week and a half ago, the Government provided  
19   Silverpeak with a proposed settlement stipulation. Silverpeak  
20   then provided the proposed stip to Danske. We are informed by  
21   Silverpeak yesterday that they're awaiting Danske's comments to  
22   the stipulation. If the stipulation can be agreed upon, and we  
23   don't see why it wouldn't be because it's very basic, the  
24   Government can seek the additional internal and DOJ approvals  
25   that are required. And we've begun that process but cannot

1 move it along further until we agree upon the stip.

2           So at this point the question is whether Danske is  
3 agreeable to the settlement stipulation. And as the Court is  
4 aware, each time a settlement seemed to have been reached,  
5 Danske changed its mind about what it wanted. Most recently,  
6 Danske has been arguing that it should be permitted to sell its  
7 note to Silverpeak. The current proposed settlement will  
8 permit them to do just that.

9           So we're not really sure why Danske has not provided  
10 us with their comments about the settlement stipulation. And  
11 perhaps they can speak to that. But as of now we're prepared  
12 to move forward with it.

13           THE COURT: All right, let me hear from Mr.  
14 Kostolampros regarding that issue.

15           MR. KOSTOLAMPROS: Sure, Your Honor. We're just  
16 recently received the settlement agreement, so we are reviewing  
17 it and will provide comments as soon as we can. And we take  
18 issue with the Government's representations about us not moving  
19 forward with the settlement and changing our position.

20           THE COURT: Yes.

21           MR. KOSTOLAMPROS: It's not worth getting into. But  
22 just for the record, so just as to that.

23           THE COURT: Right.

24           MR. KOSTOLAMPROS: And there's no reason to even get  
25 into that. But we are and we're hopeful that we can move

1 forward, Your Honor. The only issue that we have is we know it  
2 takes a while. We've been through this process before where we  
3 haven't been able to finalize an agreement. And not only that,  
4 we understand that there needs to be other DOJ approvals. And  
5 our concern is, if we don't move forward we could be left, you  
6 know, three or six months down the road in the same position  
7 that we found ourselves, you know, three, six months ago.

8 THE COURT: Well let me ask the Government. Once the  
9 Bank gets back to you, if the Bank says we don't have any  
10 objection to this, how long would it take the Government to get  
11 whatever necessary approvals it would need to finalize it?

12 MS. O'CONNOR: Well, Your Honor, we'd have the  
13 internal approvals which we would expect to have those in short  
14 order. Of course we can't speak on behalf on behalf Main  
15 Justice (phonetic) but we would certainly make it clear that we  
16 would need this to, an expeditious response. And we don't  
17 anticipate any issues given that the stip is relatively simple,  
18 because it's not involving all the other third party petitions.

19 So as I said, this is a very basic stipulation. So  
20 we would anticipate this moving along quite quickly.

21 THE COURT: All right. But what does quite quickly  
22 mean? Weeks, a couple of weeks?

23 MS. O'CONNOR: We would be hopeful it would be a  
24 couple of weeks. Again we can't speak on behalf of Main  
25 Justice, however, we would plan to do this within a couple of



1 weeks, that would be our --

2 THE COURT: All right, well I'm prepared, once the  
3 Bank gives its approval, I'm prepared to set a date, you can  
4 let Main Justice know that I've set a date by which I want the  
5 Government to respond to this. This is a highly unusual  
6 situation with a lot of issues. So, and given how basic this  
7 seem to be, in terms of what it's trying to resolve, I agree  
8 with you that it shouldn't take long. So I'll set a date and I  
9 hope Mr. Kostolampros, that would alleviate the Bank's concern.

10 MR. KOSTOLAMPROS: Yes, Your Honor, it would.

11 THE COURT: All right. So does anybody else -- let me  
12 see if anybody else wants to speak to that. I know we have Mr.  
13 Holden on the line for Silverpeak. But does anybody else want  
14 to speak to the settlement issue?

15 MR. HILL: Judge, if I could, this is Chris Hill for  
16 CSL Properties. We're in a unique position and we're in a bit  
17 of a legal pickle. As you know, we're made up of mostly the  
18 victims of the Kenner claim. And in fact many of our CSL  
19 members are, would benefit from the current settlement. So, to  
20 that extent, we don't want to get in the way of it.

21 The problem is, as far as CSL the entity, this is  
22 going to be a great deal -- Danske's out, the Government is  
23 out, and they just get to walk away from the chaos that has  
24 really been created with this entity. We have no idea, is  
25 Kenner -- are they walking away from Kenner's forfeiture of

1 Baja Ventures -- does the guy who defrauded my clients still  
2 remain a 35 percent owner? You know, everyone is walking away  
3 from this deal and we're left holding the proverbial bag for a  
4 project that's been basically put on hold of what the  
5 Government's been doing for the last four or five years.

6           Again, I'm in a little bit of a bind on how to  
7 respond to that. But I represent CSL Properties. I've got to  
8 tell you, on behalf of CSL what has happened is incredibly  
9 detrimental, that the victims keep getting punished. So now  
10 everybody is getting paid and the guys who funded the entire  
11 project in the beginning, and got probably a far too small  
12 percentage, are facing being foreclosed out by Silverpeak. I  
13 have a problem with that.

14           THE COURT: Well, let me just ask -- Mr. Kenner  
15 obviously has, he has forfeited his interest by virtue of the  
16 Court's forfeiture order as well to him. But does the  
17 Government want to speak to that issue?

18           MS. O'CONNOR: Yes, Your Honor, the settlement in  
19 principle, we believe is in the best interest of everyone  
20 involved because CSL and all the other entities will retain  
21 their respective ownership interest in the resort. So they're  
22 not suffering any loss in that they still have ownership. And  
23 it will, the Government will obtain a lump sum payment from  
24 Silverpeak and then request Main Justice apply those forfeited  
25 funds to restitution.

1           So we don't see that this is something that is  
2 detrimental to the third parties at all. And while it is  
3 unfortunate that Kenner, his interests would no longer be  
4 forfeited because we would now forego the forfeiture of the  
5 equity interest, if the third parties have an issue with that,  
6 they certainly have civil remedies of their own to pursue.

7           And we would point out that John Kaiser has filed a  
8 petition claiming an interest in Baja interest. So you know,  
9 if in fact he is the owner of it, that would mean that Phil  
10 Kenner is not the owner. So --

11           THE COURT: So you're saying as a result of this  
12 settlement, the Government is not seeking any forfeiture at  
13 least as to Mr. Kenner's interests in these entities, is that  
14 what I understood you to say?

15           MS. O'CONNOR: Yes, the Government would forego  
16 forfeiting any of the resort property equity interests, other  
17 than the home owned by Jowdy at this point.

18           THE COURT: All right, so Mr. Hill, I don't know if  
19 that gives you any --

20           MR. HILL: Obviously we don't --

21           THE COURT: -- given the discretion of the Government,  
22 but not the Court, they pursue forfeitures, they decide how to  
23 resolve them. But I was hoping -- I am aware under the law  
24 that the Government can utilize the forfeiture money, get  
25 permission to then apply it to restitution. It sounds like

1 that's what the US Attorney's Office intention is here, which I  
2 think is what the victims like to hear. So I don't know what  
3 else I can tell you with respect to that.

4 MR. HILL: Right, Judge, we love good intentions,  
5 they're wonderful. The problem is, this is like someone  
6 condemning a home that you own a portion of, and keeping it in  
7 litigation for five years, and then depressing the value. And  
8 at the end of the five years saying, okay, you get your house  
9 back, here's your minority interest. It doesn't make you  
10 whole. It doesn't. It's --

11 THE COURT: I understand what you're saying, but you  
12 do have the interest, which hopefully will still be, even  
13 though it may be depressed, will be worth something. And  
14 hopefully your individual clients, who are behind CSL, are  
15 going to get restitution, are going to get cash as well. So,  
16 you know, I understand it's not, it's far from perfect, but  
17 given where we're at, you know, I don't think -- I don't look  
18 at what the Government is doing and say what is the Government  
19 doing. We are where we are at this point. And this is what  
20 I've been urging the Government to do. So you know, I don't see  
21 any other clear path forward. Let's put it that way. But in  
22 any event, it's in the discretion of the Government.

23 MS. O'CONNOR: Your Honor, we also would like to point  
24 out that there are other assets of the defendants that we're  
25 going after, seeking forfeiture of, for example the airplane

1 and other property. It would just be these particular  
2 interests that we would forego forfeiting.

3 THE COURT: Right. And the other thing, Mr. Hill, is  
4 that whatever the property and the interest is worth now, is  
5 only going to be further depressed if this were to continue,  
6 which has been the problem all along. So, you know, I think  
7 unfortunately we have to look at where we're at now and see  
8 what the best path forward is.

9 So, in any event, anybody else want to add anything?

10 MR. WOLINSKY: Your Honor, it's Marc Wolinsky, just  
11 to state the obvious, this is a usually positive development.  
12 And I request that you keep it on a very short leash to keep it  
13 on track.

14 THE COURT: Yes, it's my intention. Let me just ask  
15 the Bank and the Government, in light of this -- I don't want  
16 to waste everybody's -- I know the Bank in its letter said that  
17 you don't want to waste time. And, but I don't know, do you  
18 want to set a schedule with respect to the discovery, or do we  
19 just -- it sounds like it's going to be resolved in literally a  
20 matter of two weeks or so.

21 MS. RAMACHANDRAN: Your Honor.

22 THE COURT: Yes.

23 MS. RAMACHANDRAN: This is Seetha Ramachandran on  
24 behalf of Owen Nolan. I'd just like to quickly say something.  
25 I mean, like Mr. Hill, I'm not sure exactly how to respond

1 because I haven't seen the settlement agreements. I'm not  
2 privy to these discussions. But with respect to Mr. Kenner's  
3 interest in this property, it's my understanding that even if  
4 the Government foregoes, you know, forfeiting the property  
5 itself, you know, they could actually seek to enforce the money  
6 judgment that was imposed as part of Mr. Kenner's sentence,  
7 against any assets that he might come into in the future.

8           And you know, if they do that, then those monies  
9 could also be applied to restitution or distributed in some  
10 way. So I just, I mean I'm -- like Mr. Hill, I'm not sure  
11 exactly how to respond, it surprises me that after committing  
12 this multimillion dollar fraud, Mr. Kenner would be allowed to  
13 retain any interest in any property, especially in light of a  
14 forfeiture judgment over him, which has not been satisfied.

15           THE COURT: Yes --

16           MS. RAMACHANDRAN: And it won't be satisfied from the  
17 airplane or anything else.

18           THE COURT: No, I think that's what clarify -- let me  
19 just ask Ms. O'Connor that, because I think you understand,  
20 even if you're not forfeiting his interest in the Baja  
21 Ventures, if there were money that was obtained in any of the  
22 entities that Mr. Kenner has an interest in, the Government  
23 could still, through the money judgment forfeiture, seek to  
24 recoup any money that he would make as a result of any  
25 subsequent transactions with respect to these interests. Is

1 that accurate, Ms. O'Connor?

2 MS. O'CONNOR: Yes, Your Honor, that's actually what  
3 we told Ms. Ramachandran on the phone. We indicated that even  
4 though it is -- he would potentially have an interest if in  
5 fact he retains any kind of interest, and at some future date  
6 liquidate it, the Government could then seek forfeiture of  
7 those funds to satisfy the forfeiture money judgment.

8 MS. RAMACHANDRAN: Just to clarify, I think the  
9 discussion I had with the Government was that normally that's  
10 what they might do, but their view was, because Mr. Kaiser had  
11 filed a claim to that, that Kenner no longer had that interest.  
12 But I think that's subject to all kinds of you know, factual  
13 disputes. And by recognizing that, you know, before the  
14 resolution of these claims, then it essentially puts the burden  
15 on other claimants to litigate this through civil litigation.  
16 And most of them just don't have the resources to do that.

17 So I don't think that's exactly what was discussed.  
18 I'm aware of the issue. But my understanding is, the  
19 Government doesn't necessarily believe it needs to do that  
20 here. But I know that the US Attorney's Office in the Eastern  
21 District routinely as a matter of course, aggressively pursues  
22 substitute assets in criminal cases.

23 THE COURT: Ms. O'Connor.

24 MS. O'CONNOR: Yes, Yes, Your Honor, I think the  
25 misunderstanding is that we understand that a petition was

1 filed by John Kaiser asserting an interest in Baja Ventures.  
2 If the Government foregoes forfeiture of Baja Ventures and at  
3 some point in the future the resort property is sold, and there  
4 might be some (indiscernible - audio skip) at that point,  
5 ownership -- or perhaps sooner, ownership would be resolved.  
6 And then if it turns out that Kenner retained some sort of  
7 interest, the Government then would seek any kind of income he  
8 receives to satisfy the forfeiture money judgment.

9           On the other hand, if Mr. Kaiser pursues ownership of  
10 Baja Ventures, and it's resolved in his favor, then the  
11 Government of course would not be able to pursue those funds to  
12 satisfy the forfeiture money judgment. So it's not as though  
13 we can't do it, it at this point, the ownership is still in  
14 question.

15           THE COURT: All right, assuming the ownership gets  
16 resolved in a manner where Mr. Kenner, again obtains some  
17 money, the Government would then aggressively pursue obtaining  
18 that money through the forfeiture money judgment from Mr.  
19 Kenner?

20           MS. O'CONNOR: Yes. That's what we would do.

21           THE COURT: All right.

22           MR. HOLDEN: Your Honor, if I could weigh in, this is  
23 John Holden for Silverpeak. We are working with the  
24 Government, we're optimistic on this. And we're hoping to move  
25 it forward as quickly as possible. I should say the Government



1 and Danske Bank.

2 But with respect to Mr. Kenner's shares, we're  
3 kicking around some options that we're trying to work through  
4 that might avoid at least part if not all of the problem, by  
5 our comments to the Government throughout settlement agreement.  
6 We haven't finalized them yet. But we will circulate them to  
7 the Government as soon as we have all of the comments and  
8 Danske Bank and collectively can get them a redline.

9 THE COURT: When you say, resolve the issue of Mr.  
10 Kenner's interest?

11 MR. HOLDEN: Potentially. We're looking at it. We're  
12 trying to figure out some solutions in terms of, you know, our  
13 understanding is that the forfeiture order as to Mr. Kenner's  
14 equity interest is final. And so we're trying to figure out a  
15 way in which we can resolve that in terms of the Government now  
16 having (indiscernible - audio skip) in connection with the  
17 settlement agreement.

18 THE COURT: All right. But either way you're confident  
19 this is going to go forward?

20 MR. HOLDEN: We're confident, from our perspective,  
21 yes, Your Honor. We're optimistic.

22 THE COURT: All right.

23 MR. SOUTHER: Your Honor, this is Tom Souther, I'm  
24 sorry to interject here. I have not been privy to the  
25 settlement discussions and the settlement agreement. And I'm

1 hearing for the first time today that -- I was under the  
2 impression this was going to be a resolution of the forfeiture  
3 proceeding, and now hearing for the first time that while it  
4 would resolve most of it, the Government continues to pursue  
5 plans to continue to pursue the forfeiture of Mr. Jowdy's  
6 personal property.

7           Which I mean the irony is befuddling, because you  
8 know, here they're talking about leaving the convicted felon  
9 who orchestrated this whole crime, you know, with his shares.  
10 And yet they're going to continue to pursue trying to recoup  
11 Mr. Jowdy's home. And I'm, I mean I'll take it up with the  
12 Government separately, but I just thought you know, it seems  
13 somewhat ironic that that's the direction that the Government  
14 is going here.

15           THE COURT: Well, it's obviously more complicated than  
16 that. First of all the Government is trying to extricate itself  
17 from the forfeiture of the resort in a foreign country, with  
18 all the problems that we have discussed over many years. So,  
19 that's what they're trying to do. And obtain some money  
20 hopefully on behalf of the victims.

21           Mr. Kenner is not getting off free as a result of  
22 this settlement, because as you heard, he has an enormous money  
23 forfeiture judgment, so if he were to recoup any money in  
24 connection with any of his interests, in any of these entities,  
25 the Government could then quickly turn around and get that

1 money from him. So the idea that Mr. Kenner is somehow  
2 benefitting from this, I think is not ultimately going to be  
3 accurate.

4 And then as to your client and his home, again this  
5 is in the discretion of the Government. And you can obviously  
6 discuss it with them, take it up with them. But you know, they  
7 are entitled to always try to pursue it.

8 So Ms. O'Connor, you did say the majority of the  
9 forfeiture proceeding would be complete, other than Mr. Jowdy's  
10 property. Is there anything else that the Government  
11 anticipates would be moving forward, or that would be it?

12 MS. O'CONNOR: Well there are the other assets that  
13 the Government seeks forfeiture of the airplane for example and  
14 so forth.

15 THE COURT: Right.

16 MS. O'CONNOR: But in terms of the Mexican property,  
17 it would just be Mr. Jowdy's home, that would be the remaining  
18 property at issue.

19 THE COURT: All right. I'm trying to think now, are  
20 there any other petitions relate, the third party petitions,  
21 any of them relate to the plane or any of the other assets, or  
22 have petitions been put in with respect to those?

23 MS. O'CONNOR: I don't believe so, Your Honor.

24 THE COURT: Okay. All right. So my view with respect  
25 to -- I don't want to waste everybody's time or my time going

1 through discovery disputes. I think most of them have been  
2 resolved. So my intention would be to put it off for a couple  
3 of weeks in the event that this does not come to fruition. Mr.  
4 Kostolampros?

5 MR. KOSTOLAMPROS: Your Honor, I think if that's your  
6 inclination, our suggestion would be, and we would say to keep  
7 this moving so that we're not left in the position where we  
8 were before, is to schedule a status conference, you know,  
9 within two to three weeks. Not only to apprise the Court, but  
10 maybe within two weeks apprise of the Court of what the status  
11 is. But also have a conference set so that if we are in a  
12 position where things haven't moved forward, or the settlement  
13 is not going forward, we're able to move forward quickly on  
14 your decision on discovery. And also setting a schedule.

15 THE COURT: Why don't we -- I'm not, this is not  
16 binding in any way, but if you can give me an estimate of when  
17 you think the Bank might get back to the Government, that would  
18 be helpful to me in terms of figuring out when to schedule it.  
19 Do you have an idea of like how long we're talking about or --

20 MR. KOSTOLAMPROS: Sure, Your Honor, I think we could  
21 probably get back to the Government by Friday.

22 THE COURT: All right, so --

23 MR. HOLDEN: Your Honor, I'm sorry, this is John  
24 Holden again. I'm sorry to interrupt, but based on some of the  
25 comments made today, I think we need to go back and make some

1 revisions to our comments. So if, we might be able to get it  
2 done Friday, but if we could have to early next week it would  
3 probably be better. Because I ideally we'd like to consult  
4 with Danske Bank and try to get on the same page to streamline  
5 this as much as possible and just have one set of comments  
6 going back to the Government.

7 THE COURT: All right, so what I think I'll do is, I'm  
8 going to -- the deadline on (indiscernible - audio skip)  
9 Government get this settlement approved, once the Bank, once  
10 these revisions are made and the Bank okays it, I want the  
11 Government to advise Main Justice that I want a response from  
12 the Government in two weeks, as to whether or not it is  
13 approved. And then my plan is to set a conference the third  
14 week in September, a phone conference, just to discuss where  
15 we're at. And what needs to be done at that point. Does that  
16 make sense?

17 MS. O'CONNOR: Yes, Your Honor, we can certainly seek  
18 approval within a two week period. However, if the comments  
19 that come back entail significant changes to the stipulation,  
20 they might, we might have to have a little additional  
21 discussions about the language. So we'd just ask the Court to  
22 consider that when setting the schedule.

23 THE COURT: Yes, well, I'm kind of factoring that  
24 there might be a back and forth there. If there's some  
25 monumental or major change that's going to give the Government

1 some pause, you can certainly send me a letter. But I'm  
2 assuming whatever these changes are, they're not going to be so  
3 substantive that it derails the process. Okay?

4 MS. O'CONNOR: Yes, thank you, Your Honor.

5 THE COURT: Let me just get a proposed date. Hold on  
6 one second. How about we'll have a status conference September  
7 24th at 3 p.m. again.

8 MS. O'CONNOR: That's good for the Government, Your  
9 Honor.

10 MR. KOSTOLAMPROS: That's good for us, too, Your  
11 Honor, Danske Bank.

12 THE COURT: All right. All right, but my expectation  
13 is, again based upon this time frame, assuming again that  
14 there's not any major revisions that derail the process, is  
15 that two weeks from when the Bank signs off on the settlement,  
16 two weeks for the Government -- if the Government is unable to  
17 get that approval from Washington in two weeks, I want a letter  
18 explaining to me why that is. And this is again expedited  
19 under the circumstances. So that should give them plenty of  
20 time to do that.

21 All right. Any other issues?

22 MR. HILL: Chris Hill for CSL. To the extent that the,  
23 apparently the settlement is going to impact the ownership  
24 structure of DCSL moving forward, we don't need to see  
25 everything, but could we be made privy, as an owner, of that,

1 of that settlement agreement to the extent that it impacts  
2 that, so that we can address it?

3 THE COURT: Does the Government want to respond to  
4 that?

5 MS. O'CONNOR: Your Honor, I'm not sure what counsel  
6 means by that.

7 MR. HILL: I can respond, Judge, if you want.

8 THE COURT: Yes.

9 MR. HILL: I don't -- to the extent it affects the 39  
10 percent stake ownership in DCSL, it's either going to be  
11 forfeited or subject to forfeiture, or not, that's obviously  
12 going to impact the entity moving forward and the rest of the  
13 remaining owners. So to the extent that this settlement is  
14 going to impact that holding of Kenner or honestly of Mr.  
15 Jowdy, in KHA, we would want to know what is out there, and  
16 what's going to be left of our entity when they're done with  
17 this process.

18 THE COURT: My understanding is the settlement is not  
19 going to affect those, but Ms. O'Connor.

20 MS. O'CONNOR: No, we agree with you Your Honor, the  
21 settlement is not going to affect any of the current ownership  
22 of the resort.

23 THE COURT: The current ownership of the resort is  
24 going to stay exactly as it is. All right, so I don't think  
25 the Government has any obligation, obviously they can if they

1 want to, but I don't think they have any obligation to share  
2 the terms of the settlement agreement with any of the other  
3 entities who are not impacted by the Government essentially  
4 leaving the forfeiture.

5 MS. RAMACHANDRAN: Your Honor.

6 THE COURT: Yes.

7 MS. RAMACHANDRAN: Sorry to keep -- this is Seetha  
8 Ramachandran. I think what Mr. Hill is trying to say, and I  
9 agree with it. I mean I don't want to hold up this settlement  
10 either. You know, this is a good thing for most of the victims  
11 here. I think the concern with the 39 percent, as I understand  
12 it, you know, there's an open question as to whether Kenner is  
13 going to be either recognized as the owner of that, and then  
14 his interest would later be forfeited as a substitute asset,  
15 you know, any monies he recovers from that. Or whether Kaiser  
16 is going to be recognized as the owner of that.

17 And what I understand from the Government is that  
18 they're just going to recognize John Kaiser as the owner of  
19 that interest, rather than Phil Kenner. And that's really an  
20 issue of fact. Because we don't know that he's really the  
21 owner of that property. And so to the extent that they are  
22 forfeiting that later as a substitute asset, that potentially  
23 affects everybody's interest in DCSL.

24 THE COURT: I didn't hear them say they're going to  
25 recognize Mr. Kaiser's interest. I thought I heard them say



1 they don't -- they're not going to resolve his interest,  
2 they're going to await resolution of that through litigation or  
3 whatever process. And if it turns out that Mr. Kenner prevails  
4 in that then they're going to seek to recover the money from  
5 Mr. Kenner.

6 But let me just ask Ms. O'Connor, is the Government  
7 recognizing Mr. Kaiser's interest in that over Mr. Kenner's?

8 MS. O'CONNOR: No, Your Honor, as you said we're not  
9 recognizing anything with respect to ownership.

10 THE COURT: Right, there's a dispute and the  
11 Government is not taking a position. The Government is going to  
12 wait for that dispute to be resolved.

13 MS. O'CONNOR: Correct, if and when any litigation on  
14 that issue occurs.

15 THE COURT: Right.

16 MS. RAMACHANDRAN: Okay.

17 THE COURT: Ms. Ramachandran, would that answer your  
18 question?

19 MS. RAMACHANDRAN: Yes, it does.

20 THE COURT: All right.

21 MS. RAMACHANDRAN: Thank you.

22 THE COURT: All right, so I appreciate everyone's hard  
23 work on this and I hope that it continues to move forward  
24 expeditiously. So I'll await, in advance of that date I do  
25 want the Government, if they do get the approval from

1 Washington, advise the Court that it was received so that I  
2 know that going into the conference, okay?

3 MS. O'CONNOR: You will, Your Honor, thank you.

4 THE COURT: All right, thank you very much counsel.  
5 Have a good day.

6 \* \* \* \* \*

7 **C E R T I F I C A T I O N**

8 I, **PATRICIA POOLE**, court approved transcriber,  
9 certify that the foregoing is a correct transcript from the  
10 official electronic sound recording of the proceedings in the  
11 above-entitled matter.

12

13 /S/ PATRICIA POOLE

14 TRACY GRIBBEN TRANSCRIPTION, LLC DATE: December 8, 2021

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